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May 27, 2021

Smith v. Annucci, et al.

1:21-cv-01715-RA [rel. 1:17-cv-07954-RA-OTW]

Dear Judge Abrams:

We submit this joint letter on behalf of Plaintiff and the served Defendants to respectfully request a 90-day adjournment of (i) Defendants' time to answer or otherwise respond to the Complaint, currently due on May 27, 2021; and (ii) the parties' time to file a joint Rule 26(f) letter and proposed case management plan and scheduling order, currently due on May 28, 2021, and to exchange initial disclosures under Federal Rule of Civil Procedure 26(a).

Pursuant to this Court's Order and Notice of Initial Conference (ECF No. 15), counsel for Plaintiff and Assistant Attorney General Neil Shevlin met and conferred via telephone on April 29, 2021 and May 24, 2021. During these meet-and-confers, counsel exchanged the following information:

1. All Defendants (except for one whose name is still unknown to Plaintiff) have been served in accordance with Federal Rule of Civil Procedure 4(e) and have requested representation from the Office of Attorney General ("OAG").
2. Mr. Shevlin noted during the April 29 call that the Department of Corrections and Community Supervision Office of Special Investigations ("OSI") planned to re-open its investigation of Plaintiff's allegations, and pursuant to Public Officers Law § 17 and OAG policy, Mr. Shevlin was not able to represent any Defendants in the case until OSI completed that investigation. During the parties' May 24 call, Mr. Shevlin explained that the OSI investigation was ongoing, but OAG had concluded in light of OSI's earlier

investigatory efforts that OAG could represent the following supervisory Defendants in this matter: Defendants Annucci, Effman, Maher, Nunez and Shipley.

3. Mr. Shevlin explained during the parties April 29 call that OSI anticipated requiring at least three months to complete the investigation.
4. Counsel for Plaintiff informed Mr. Shevlin on the parties' April 29 call that we were contemplating amending the Complaint to add one or more additional Plaintiffs, and we explained on the May 24 call that we anticipated reaching a final decision on whether to amend shortly.
5. Mr. Shevlin is aware of one of the potential additional Plaintiffs and has explained that OSI will require at least three months to investigate her allegations.¹

Given these circumstances, the parties respectfully ask for a 90-day adjournment of Defendants' time to answer or otherwise respond to the Complaint, the parties' time to file a joint Rule 26(f) letter and proposed case management plan and scheduling order and the parties' time to exchange initial disclosures under Rule 26(a). This will provide time for OSI to complete its investigation and for the OAG to determine whether it can represent all Defendants who have requested its assistance in this matter. Counsel for Plaintiff further commits to filing an Amended Complaint, if any, within 30 days, so as to provide OAG with ample time answer or otherwise respond to the operative Complaint within this 90-day period. The new deadlines would thus be as follows:

1. Amended Complaint, if any: June 25, 2021;
2. Defendants' response to Complaint or Amended Complaint: August 25, 2021;
3. Parties' Rule 26(f) letter and proposed case management plan and scheduling order: August 26, 2021;
4. Initial disclosures under Rule 26(a): September 9, 2021.

Because Mr. Shevlin has now confirmed that OAG will represent at least some portion of the supervisory Defendants in this action, the parties have agreed to

¹ The Office of the Attorney General could not agree to represent any of the supervisory Defendants in connection with the allegations raised by the potential additional Plaintiff as OSI has not yet conducted an investigation into her claims.

commence discovery as to those represented Defendants.² Therefore, notwithstanding the adjournments requested in this letter, the parties can and will keep this case progressing over the coming three months.

This letter does not constitute a request to adjourn the initial case conference scheduled for June 4, 2021, particularly in light of the parties' dispute about the scope of discovery that should now begin. Nevertheless, the parties do not object to postponing that conference to a date after the joint submission of their Rule 26(f) report should the Court prefer.

Respectfully,

/s/ David M. Stuart

David M. Stuart
Attorney for Plaintiff

The Honorable Ronnie Abrams
United States District Court for the Southern District of New York
Thurgood Marshall United States Courthouse
40 Foley Square, Room 2203
New York, NY 10007

VIA CM/ECF

Copy to:

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28 Liberty Street, 15th Floor
New York, NY 10005

VIA CM/ECF

² There is a dispute as to the scope of discovery that should begin at this time.

Defendants' position: Mr. Shevlin anticipates moving to dismiss the claims raised by the existing Plaintiff. However, notwithstanding that planned course of action, he has agreed to work collaboratively with Plaintiff's counsel on producing discovery items of a general nature.

Plaintiff's response: It is Plaintiff's position that discovery beyond "items of a general nature" should commence as to the supervisory Defendants now represented by OAG and should not be stayed in anticipation of or pending the motion to dismiss.